

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	CSR-7089-E
	)	CSR-7090-E
Comcast Cable Communications, LLC, on	)	CSR-7091-E
Behalf of its subsidiaries and affiliates	)	CSR-7092-E
	)	CSR-7093-E
For Determination of Effective Competition	)	CSR-7094-E
In: 108 Utah and Idaho Communities	)	CSR-7095-E
	)	CSR-7096-E
	)	CSR-7097-E
	)	CSR-7098-E

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 3, 2007**

**Released: April 6, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Comcast Cable Communications, LLC (“Comcast”) has filed several petitions with the Commission for determinations of effective competition in 108 franchise areas (the “Franchise Areas”)<sup>1</sup>

<sup>1</sup> See (1) *See* Comcast Bluffdale et al. Petition (CSR 7089-E) (requesting that the Commission find effective competition in Bluffdale (UT0221); Cottonwood Heights (UT0261); Draper (UT0128); Grantsville (UT0105); Herriman (UT0244); Holladay (UT0246); Midvale (UT0049, UT0214); Murray (UT0007); Park (UT0060); Riverton (UTO137); Salt Lake (UT0009; UT0157; UTO161; UTO199; UTO226); Sandy (UT0046, UT0070); South Jordan (UTO138); South Salt Lake (UT0008); Taylorsville (UT0225); Tooele (UT0106; UT0107); Tooele (UT0097); West Jordan (UT0051); West Valley City (UT0088)); (2) Comcast Bear River et al. Petition (CSR 7090-E) (requesting that the Commission find effective competition in Bear River (UTO167); Bountiful (UT0024); Box Elder (UTO230; UT0194); Brigham City (UT0021); Centerville (UT0068); Clearfield City (UT0026, UT0085); Clinton (UT0066, UT0200); Corinne (UT0169); Davis (UT0027, UT0203); Deweyville (UTO186); Farmington (UT0069); Farr West (UT0084); Fielding (UT0170); Fruit Heights (UT0117, UTO201); Garland (UT0147); Harrisville (UTO152); Honeyville (UT0168); Hooper (UT0249); Kaysville (UT0022); Layton (UT0022, UT0090, UT0255); Marriot (UT0245); North Ogden (UT0092); North Salt Lake (UT0023; UT0177); Ogden City (UT0013); Perry (UT0150); Plain City (UT0159); Pleasant View (UTO158); Plymouth (UTO171); Riverdale (UT0035); Roy City (UT0010); South Ogden (UT0011); South Weber City (UT0111); Sunset City (UT0025); Tremonton (UT0071); Uintah (UT0112); Washington Terrance (UT0012); Weber (UT0002, UTO187); West Bountiful (UT0065); West Haven (UT0217); West Point (UT0148); Willard (UTO166)); (3) Comcast Alpine, UT et al. Petition (CSR-7091-E) (requesting that the Commission find effective competition in Alpine (UT0056); American Fork (UT0050); Cedar Hills (UTO236); Elk Ridge (UTO145); Highland (UTO189); Lehi (UTO124); Lindon (UTO190, UTO237); Mapleton (UTO191); Orem (UT0058) Payson (UT0055); Pleasant Grove (UT0052, UTO238); Provo (UT0015, UT0018); Salem (UT0053); Spanish Fork City (UT0054); Springville (UT0016); Utah (UT0153, UTO162, UTO192, UTO227); (4) Comcast Nephi, UT Petition (CSR-7092-E) (requesting that the Commission find effective competition in Nephi (UT0061)); (5) Comcast Preston, ID Petition (CSR-7093-E) (requesting that the Commission find effective competition in Preston (ID0101)); (6) Comcast Heber, UT et al. Petition (CSR-7094-E) (requesting that the Commission find effective competition in Heber (UT011), Midway (UT01242); Wasatch (UT0202)); (7) Comcast Coalville, UT et al. (CSR-7095-E) (requesting that the Commission find effective

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pursuant to Section 623(a) of the Communications Act<sup>2</sup> and the Commission's implementing rules.<sup>3</sup> Comcast alleges that its cable systems serving these Franchise Areas are subject to effective competition and, therefore, are exempt from cable rate regulation. Specifically, Comcast claims that the effective competition present in 79 of these franchise areas stems from the competing services provided by two unaffiliated direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Satellite, L.L.C. As a result, Comcast asserts that it is subject to effective competition in these franchise areas under the "competing provider" test set forth in Section 623(1)(1)(B) of the Communications Act. In addition, Comcast claims that in 29 of these franchise areas, Comcast serves less than 30 percent of the subscribers and therefore, is subject to effective competition under the "low penetration" test set forth in Section 623(1)(1)(A) of the Communications Act. No oppositions were filed.

## II. BACKGROUND

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> A finding of effective competition exempts a cable operator from rate regulation and certain other Commission cable regulations.<sup>7</sup>

3. Section 623(1) of the Act provides that a cable operator is subject to effective competition if any one of the four tests for effective competition set forth therein is met.<sup>8</sup> The "competing provider" test, set forth in Section 623(1)(1)(B) of the Communications Act, provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>9</sup> The "low penetration" test, set forth in section 623(1)(1)(A) of the

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competition in Coalville (UT0134)); **(8)** Comcast Morgan, UT et al. Petition (CSR-7096-E) (requesting that the Commission find effective competition in Morgan (UT0151); Morgan City (UT0130)); **(9)** Comcast Bear Lake, ID Petition (CSR-7097-E) (requesting that the Commission find effective competition in Bear Lake (ID0211); Garden City (UT0210); and St Charles (ID0212)); **(10)** Comcast Cache, UT et al. Petition (CSR-7098-E) (requesting that the Commission find effective competition in Cache (UT0126, UT0196); Clarkston (UT0163); Cornish (UT0205); Franklin (ID0201); Franklin City (1D0200); Hyde Park (UT0040); Hyrum (UT0043); Lewiston (UT0173); Logan (UT0004); Mendon (UT0048); Millville (UT0041); Newton (UT0164); Nibley (UT0042); North Logan (UT0037); Paradise (UT0165); Providence (UT0044); Richmond (UT0118); River Heights (UT0029); Smithfield (UT0062); Wellsville (UT0047). Communities are listed in multiple petitions because cable operators are required to file a processing fee for each physical system unit. *See* Public Notice, *Reminder as To Procedures for Filing Cable Television Effective Competition Petitions*, 20 FCC Rcd 7294 (2005).

<sup>2</sup> 47 U.S.C. § 543(a).

<sup>3</sup> 47 C.F.R. § 76.905(b).

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> *See* 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

<sup>6</sup> *See* 47 C.F.R. §§ 76.906 & 907.

<sup>7</sup> *See* 47 C.F.R. § 76.905.

<sup>8</sup> *See* 47 U.S.C. § 543(1)(1)(A)-(D).

<sup>9</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

Communications Act, provides that a cable operator is subject to effective competition under the “low penetration” competition test if fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.<sup>10</sup>

### III. DISCUSSION

#### A. Competing Provider Effective Competition

4. Comcast alleges that in 79 of the franchise areas, there is effective competition under the competing provider test.<sup>11</sup> Comcast contends that EchoStar and DirecTV, two unaffiliated MVPDs, offers comparable video programming to at least 50 percent of the households in the Franchise Areas, and that residents in each of the communities are reasonably aware of the availability of DBS service. In the Provo, Utah Franchise Area, Comcast includes subscriber data from EchoStar, DirecTV, Veracity Communications, and MSTARmetro.<sup>12</sup> While neither Veracity<sup>13</sup> nor MSTARmetro currently have a subscriber base equal to 50 percent of the households in Provo, MSTARmetro states that it is capable of providing services to more than 50 percent of the households in Provo.<sup>14</sup> Therefore, in each of these 79 communities, states Comcast, the first prong of the competing provider test is satisfied: at least two unaffiliated MVPDs offer comparable video programming to at least 50 percent of the households.

5. We agree. The Commission has repeatedly held that DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>15</sup> The two DBS providers’ subscriber growth reached approximately 26.1 million as of June, 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and EchoStar has become the third largest, MVPD provider.<sup>16</sup> Because the two DBS providers have a nationwide footprint and serve well over 20 percent of all MVPD subscribers nationwide, we believe these statistics support the presumption that Comcast’s franchise areas are within their satellite footprint. Moreover, Comcast has provided sufficient evidence that residents of the Franchise Areas are reasonably aware of the availability of DBS service by offering examples of DBS advertising and as, will be discussed below, by presenting evidence that penetration rates in each of these franchise areas exceed 15 percent.<sup>17</sup> Finally, with respect to the issue of program comparability, we find that the DBS providers’ programming satisfies the Commission’s program comparability criterion because DirecTV and EchoStar offer more than 12 channels of video programming, including more than one non-broadcast channel.<sup>18</sup> The additional evidence of MVPD services available through MSTARmetro in Provo, Utah, including advertising and programming information, further supports Comcast’s contention that the first prong of

<sup>10</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>11</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>12</sup> *See* Petition at 2 n.7. To receive video programming over the iProvo Fiber Network, residents of Provo must subscribe to either Veracity Communications or MSTARmetro, both of whom require that subscribers bundle their cable television packages with either telephone and/or Internet service. *See* Petition, Exhibit 2 (Letter dated January 10, 2006 from Paul Venturella, Provo City Telecommunications Manager; Provo City Power).

<sup>13</sup> *See* Petition, Exhibit 7 (email dated March 31, 2006 from Matthew Ward, VP Sales and Marketing).

<sup>14</sup> *See* Petition, Exhibit 7 (email dated May 3, 2006 from Scott Little of MSTARmetro).

<sup>15</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>16</sup> *See Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11, 21 FCC Rcd 2503 at ¶¶ 6, 13, 72-73 (2006).

<sup>17</sup> *See* Comcast Petitions at 4 & Exhibit 1. *See also* Comcast Replies at Attachment A.

<sup>18</sup> *See* 47 C.F.R. § 76.905(g).

the test is met. Therefore, we conclude that Comcast has met its burden under the first prong of the competing provider test.

6. Under the second prong of the test, Comcast must show that in each of the 79 communities, the number of households subscribing to MVPD service, other than the largest MVPD, exceeds 15 percent of the households. Comcast asserts that it is the largest MVPD in 46 of the 79 Franchise Areas. For the remaining 33 communities, Comcast was unable to determine the identity of the largest MVPD but contends that the identity of the largest MVPD is “immaterial” because “both DBS . . . and cable readily pass the 15% threshold.”<sup>19</sup> For each of these 79 communities, Comcast has provided a copy of the 2000 Census Report showing the number of households in the Franchise Areas.<sup>20</sup> Comcast also purchased a Satellite Broadcasting and Communications Association (“SBCA”) Effective Competition Tracking Report for the Franchise Areas reflecting the number of DBS subscribers within the specified ZIP codes associated with the cable communities.<sup>21</sup> Because franchise areas and ZIP codes often do not directly overlap, Comcast applies an allocation figure derived through a geocoding process completed by Media Business Corp. (“MBC,” previously known as “SkyTrends”) to SBCA’s DBS subscriber count to ensure that the final count reflects only that portion of the five-digit postal ZIP code within a particular Franchise Area.<sup>22</sup> The data provided by Comcast indicates that DBS penetration rates exceed 19 percent in 78 of the 79 communities, and therefore, Comcast asserts, there is effective competition in these communities.<sup>23</sup> In the final community, Provo, Utah, Comcast used subscriber data from two additional MVPDs, Veracity Communications and MSTARmetro,<sup>24</sup> to conclude that penetration rates of competing MVPDs in Provo, Utah exceeded the statutory 15 percent minimum.

7. We accept the data, including revised Exhibit A, provided by Comcast as establishing a reasonable basis for finding that DBS penetration exceeds 15 percent in the Franchise Areas. These penetration rates provide a sufficient margin of error with respect to the 15 percent competing provider threshold. Moreover, a similar methodology used in calculating DBS penetration has been approved by the Commission in previous cases with similar fact patterns to the ones described by Comcast here.<sup>25</sup> We therefore find that Comcast has provided evidence sufficient to meet the second prong of the competing provider effective competition test.

## **B. Low Penetration Effective Competition**

8. Comcast also argues that it is subject to effective competition in an additional 29

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<sup>19</sup> See Petition at 6. To make this determination, Comcast compared its own subscriber data against the DBS subscriber data, purchased from the Satellite Broadcasting and Communications Association (“SBCA”) and adjusted, as described below, to reflect the actual franchise areas served by Comcast’s cable systems. Where the SBCA data exceeded Comcast’s own subscriber numbers, Comcast was unable to determine the largest MVPD in the Franchise Area. Comcast did not divulge the identity of these 33 communities. Nevertheless, both DBS and Comcast serve more than 15 percent of the households in these Franchise Areas.

<sup>20</sup> See Petition at Exhibit 8.

<sup>21</sup> See *id.* at 7.

<sup>22</sup> See *id.* at 7-8.

<sup>23</sup> See Petition at 8 and Exhibit 7.

<sup>24</sup> See Petition at 2 n.7. To receive video programming over the iProvo Fiber Network, residents of Provo must subscribe to either Veracity Communications or MSTAR MetroNet, both of whom require that subscribers bundle their cable television packages with either telephone and/or Internet service. See Petition, Exhibit 3 (Letter dated January 10, 2006 from Paul Venturella, Provo City Telecommunications Manager; Provo City Power).

<sup>25</sup> See, e.g., *Charter Communications, Inc.*, 19 FCC Rcd 6878 (2004); *Time Warner Entertainment-Advance/Newhouse Partnership*, 21 FCC Rcd 26937 (2006).

franchise areas under the “low penetration” test because Comcast serves less than 30 percent of the local households in these franchise areas. For each of these franchise areas, Comcast compared the number of subscribers to its cable system serving the area to the U.S. Census household figures for each community.<sup>26</sup> In each of the communities, Comcast determined that its penetration rates were less than 30 percent. Based on this evidence, as summarized in revised Exhibit B, as establishing that Comcast is subject to effective competition under the low penetration test as set forth in our rules.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition filed by Comcast Cable Communications, LLC for a determination of effective competition in the 108 Idaho and Utah communities **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities in the Franchise Areas overseeing Comcast Cable Communications, LLC, **ARE REVOKED**.

11. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>27</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>26</sup> See Petition at 9.

<sup>27</sup> 47 C.F.R. § 0.283.

## Exhibit A – Competing Provider Data for:

CSR-7089-E	CSR-7094-E
CSR-7090-E	CSR-7095-E
CSR-7091-E	CSR-7096-E
CSR-7092-E	CSR-7097-E
CSR-7093-E	CSR-7098-E

Franchise Area	2000 Census Household <sup>28</sup>	DBS/MVPD Subs Allocated	CPR: DBS Penetration Rate
Alpine	1662	831	50%
American Fork	5934	2872	48%
Bear River	226	55	24%
Bluffdale	1112	890	80%
Bountiful	13341	3400	25%
Brigham City	5526	2121	38%
Cedar Hills	695	381	55%
Centerville	4138	1188	29%
Clarkston	206	71	34%
Clearfield	15842	3340	21%
Clinton	3529	1522	43%
Cottonwood Heights	11737	3557	30%
Davis	1091	534	49%
Deweyville	98	53	54%
Draper	6305	3497	55%
Farmington	3087	1481	48%
Farr West	1034	375	36%
Fielding	139	85	61%
Fruit Heights	1256	489	39%
Garland	588	264	45%
Harrisville	1010	378	37%
Heber City	2296	1822	79%
Herriman	437	355	81%
Highland	1804	871	48%
Holladay	5096	1181	23%
Hooper	1150	717	62%
Hyde Park	763	291	38%
Hyrum	1683	693	41%
Kaysville	5496	2097	38%
Layton	18282	6571	36%
Lehi	5125	1077	21%
Lindon	1935	815	42%
Logan	13902	2656	19%
Mapleton	1442	694	48%
Mendon	267	134	50%
Midvale	10089	2255	22%
Midway	687	503	73%

<sup>28</sup> Household Data Figures, available at <http://factfinder.census.gov>.

Franchise Area	2000 Census Household <sup>29</sup>	DBS/MVPD Subs Allocated	CPR: DBS Penetration Rate
Millville	395	128	32%
Murray	12673	2514	20%
Nephi	1430	688	48%
Newton	196	110	56%
Nibley	566	146	26%
North Logan	1728	356	21%
North Ogden	4416	1760	40%
North Salt Lake	2874	1264	44%
Ogden City	27384	7836	29%
Orem City	23382	5641	24%
Paradise Town	217	139	64%
Park	2705	1028	38%
Payson	3654	2117	58%
Perry	747	289	39%
Plain City	979	322	33%
Pleasant Grove City	6109	3347	55%
Pleasant View	1740	701	40%
Providence	1240	409	33%
Provo	29192	7136 <sup>30</sup>	24%
Richmond	619	327	53%
River Heights	477	120	25%
Riverdale	2806	934	33%
Roy City	10689	3940	37%
Salem	1128	580	51%
Salt Lake	70607	15669	22%
Smithfield	2066	1167	56%
South Jordan	7507	4059	54%
South Ogden	5193	1373	26%
South Weber	1080	357	33%
Springville	5975	2557	43%
Summit	6003	3465	58%
Sunset City	1785	781	44%
Taylorsville	18530	5170	28%
Tremonton	1698	515	30%
Uintah	365	93	25%
Washington Terrace	3019	930	31%
Wellsville	778	395	51%
West Bountiful	1250	605	48%
West Jordan	18897	8562	45%
West Point	1645	717	44%
West Valley City	32253	8793	27%
Willard	517	271	52%

<sup>29</sup> Household Data Figures, available at <http://factfinder.census.gov>

<sup>30</sup> Includes 1327 MSTARmetro subscribers, 1921 Veracity subscribers, and 3888 DBS subscribers. See Petition at Exhibit 7.

## Exhibit B – Low Penetration Data

CSR-7089-E	CSR-7094-E
CSR-7090-E	CSR-7095-E
CSR-7091-E	CSR-7096-E
CSR-7092-E	CSR-7097-E
CSR-7093-E	CSR-7098-E

Franchise Area	2000 Census Household Data	Comcast Subscribers	Comcast Penetration Rates
Bear Lake	709	8	1%
Box Elder	2338	66	3%
Cache	1582	60	4%
Coalville	465	24	5%
Corinne	190	45	24%
Cornish	73	5	7%
Elk Ridge	413	91	22%
Franklin	17429	7	0%
Franklin	195	30	15%
Garden City	131	11	8%
Grantsville	1856	354	19%
Honeyville	358	93	26%
Lewiston	531	88	17%
Marriott	458	106	23%
Morgan City	1257	136	11%
Morgan	789	155	20%
Plymouth	105	24	23%
Preston	1529	208	14%
Riverton	6348	1845	29%
Sandy	25737	4284	17%
South Salt	8022	2244	28%
Spanish Fork City	5534	787	14%
St. Charles	57	1	2%
Tooele	2539	324	13%
Tooele	7459	1542	21%
Utah	46653	127	0.27%
Wasatch	1557	29	2%
Weber	5280	735	14%
West Haven	1131	184	16%